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10/815,519	04/01/2004	Michael J. Ziegler	1928A1	1571
7590	03/19/2008		EXAMINER	
PPG Industries, Inc. Law - Intellectual Property One PPG Place Pittsburgh, PA 15272			NILAND, PATRICK DENNIS	
			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/815,519

Filing Date: April 01, 2004

Appellant(s): ZIEGLER ET AL.

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Donald Palladino  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 12/13/07 appealing from the Office action mailed 7/13/07.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

WO 99/47617

VAN DEN BERG et al.

09-1999

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

3. Claims 16, 20-27, and 29-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/47617 Van Den Berg et al..

Van Den Berg et al. discloses oligomers falling within the scope of the instant claims at the abstract; page 1, lines 5-26; page 2, lines 1-29, particularly 26 of which “if so desired” indicates that this component, which appears to be excluded by the last two lines of the instant claim 1, is not required; page 3, lines 1-29, particularly 10-29 which discloses the instantly claimed fatty acids, polyols, and “modification”; page 4, lines 1-23, particularly 12-23; page 5, lines 1-10; page 7, lines 12-29; page 8, lines 1-29, particularly 21-29; page 9, lines 1-26; page 12, lines 7-29; page 13, lines 1-27; page 14, lines 1-28, particularly 8-22; page 15, lines 1-29, particularly 21-26, which includes coating of wood; and the remainder of the document. It would have been obvious to one of ordinary skill in the art at the time of the instant invention to make the instantly claimed oligomer from the disclosure of the reference because it is encompassed by the disclosure of Van Den Berg and would have been expected to give a coating having the properties disclosed by Van Den Berg. Van Den Berg discloses using these in coating substrates including wood which reads on the instantly claimed methods, and curing them oxidatively or with photoinitiators. It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the composition molecular weights and polydispersities of the instant claims 32-35 because the molecular weights of the moieties disclosed above are expected to have molecular weights and polydispersities within the broad ranges of the instant claims in order to function as a coating agent and such polydispersities are typical for such oligomeric species. It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use no solvent because the oil based compositions of the reference are typically of low enough

viscosity to be used without organic solvent and “generally” with regard to solvent usage indicates that solvent is not always required. It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the woods of the instant claim 46 in the form of the instant claim 47 because these are typical woods available in North America which are typically stained with oil based coatings, particularly when they are in the form of the instant claim 47 as is well known. It is not seen that some degree of scratch resistance would not be imparted by the highly crosslinked coatings of the reference in accordance with the instant claim 48.

The photoinitiator of the reference, e.g. page 12, lines 16 et seq. generate free radicals upon exposure to light as is well known to the ordinary skilled artisan. Note the benzoyl portion of the referenced photoinitiators. Thus, modification of the reference in this regard is not required. The instant claims do not exclude the acids of the reference. The appellant’s arguments have been fully considered but are not persuasive for the reasons stated above.

#### **(10) Response to Argument**

Appellant's argument that the instant claims are directed to compositions, not oligomers per se is noted. However, the instant claims require oligomers in the compositions. It should be clear that the cited prior art is directed to compositions per se as “composition” is used to describe their invention throughout the document, e.g. the abstract and title, as well as from the mixtures of ingredients described. The appellant’s argument regarding “wherein the free radical curable portion is cured by free radical initiation” of the instant claims is met where the photo initiators of the prior art have free radical generating ability, as discussed in the above rejection. The examiner particularly notes page 13, lines 21-23, more particularly “generation of free

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radicals” and this entire portion of the prior art disclosure, e.g. page 12, lines 16 et seq. It is noted that subsequent to coating the substrate the free radical reaction will necessarily begin upon combination of the initiator and above discussed alkyd, as evidenced by the fact that coating composition potlife is never infinite. Furthermore, the composition of the instant claims exists at the onset of desired cure of the prior art also. Thus, the cited prior art meets “wherein the free radical curable portion is cured by free radical initiation” of the instant claims at some point in its existence. The degree of free radical curing is not claimed so any amount meets the claim limitation. The appellant has not traversed the other portions of the above rejection. The rejection above should be affirmed for the above stated reasons.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Patrick D Niland/  
Primary Examiner,  
Art Unit 1796

Conferees:

/David Wu/

Supervisory Patent Examiner, Art Unit 1796

/Gregory L Mills/

Supervisory Patent Examiner, Art Unit 1700

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